

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ANGELA V. SMITH,

5 Plaintiff,

6 vs.

7 ANDREW SAUL, Acting Commissioner of
8 Social Security,

9 Defendant.

2:20-cv-00710-APG-VCF

ORDER

10 Before the court is Plaintiff's Motion for Extension of Time to File an Answer to File Answer to
11 Certified Administration Record and New Evidence (ECF No. 21).

12 On August 11, 2020, the court ordered that in the event plaintiff intends to request a remand of
13 this case on the basis of new evidence, plaintiff will, within thirty (30) days of the filing of this Order, file
14 a motion to remand in this Court based on new evidence. (ECF No. 17).

15 Here, Plaintiff is seeking an extension of time to file a motion based on new evidence because she
16 is living between two cities during this COVID-19 pandemic.

17 Accordingly, and for good cause shown,

18 IT IS HEREBY ORDERED that Plaintiff's Motion for Extension of Time to File an Answer to
19 File Answer to Certified Administration Record and New Evidence (ECF No. 21) is GRANTED.

20 The new deadlines apply:

21 In the event plaintiff intends to request a remand of this case on the basis of new evidence, plaintiff
22 will, on or before October 9, 2020, file a motion to remand in this Court based on new evidence. The new
23 evidence shall be attached to the motion. A copy of the motion and evidence shall be served on:
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2 United States Attorney
3 501 South Las Vegas Boulevard South
4 Las Vegas, NV 89101

5 In the event plaintiff files a motion for remand on the basis of new evidence, the defendant will
6 have until thirty (30) days from the date of service of such motion to file either, (i) a notice of voluntary
7 remand of the case, or (ii) points and authorities in opposition to plaintiff's motion. If defendant files
8 points and authorities in opposition, plaintiff will have until twenty (20) days from the date of service of
9 such points and authorities to file a reply.

10 Under 42 U.S.C. § 405(g), remand for reconsideration of new evidence will not be granted unless
11 the evidence is new and material and there is a showing of good cause for failure to incorporate the
12 evidence into the record at an earlier stage. Therefore, if plaintiff seeks remand for consideration of new
13 evidence, the motion will include a statement of reasons why the new evidence was not incorporated into
14 the record at an earlier stage.

15 In the event plaintiff does not file a motion for remand on the basis of new medical evidence, the
16 plaintiff will, within thirty (30) days of receipt of this Order, file with this Court a motion for reversal
17 and/or remand.

18 Whenever plaintiff files a motion for reversal and/or remand, which includes issues based on
19 the administrative record, plaintiff's motion shall include:

20 (a) A specification of each and every condition or ailment, or combination thereof, that allegedly
21 renders plaintiff disabled and is allegedly supported by evidence contained in the administrative
22 record.

23 (b) A complete summary of all medical evidence in the record that supports plaintiff's claim
24 of disability due to each condition or ailment specified in subparagraph 5(a) above, with
25 precise references to the applicable portions of the record. This summary shall not include
medical evidence unrelated to the conditions or ailments upon which plaintiff's claim or

1 claims of disability are based. It shall be sufficient compliance with this subparagraph if plaintiff
2 shall stipulate that the Administrative Law Judge fairly and accurately summarized the evidence
3 contained in the record.

4 (c) A complete summary of all other evidence adduced at the administrative hearing that
5 supports plaintiff's claim with precise references to the applicable portions of the record.

6 It shall be sufficient compliance with this subparagraph if plaintiff shall stipulate that the
7 Administrative Law Judge fairly and accurately summarized the evidence adduced at the
8 administrative hearing.

9 (d) A complete but concise statement as to why the record does not contain substantial evidence
10 to support the defendant's claim.

11 If defendant has not filed a notice of voluntary remand and the issues in question relate to
12 the administrative record, the defendant, within thirty (30) days after being served with plaintiff's motion
13 for reversal and/or remand, will file a cross-motion to affirm which will be considered an opposition to
14 plaintiff's motion. This motion will include:

15 (a) A complete summary of all evidence in the record that the defendant contends constitutes
16 substantial evidence to support the administrative determination that plaintiff is not entitled
17 to the benefits in question. It will be sufficient compliance with this subparagraph if the
18 defendant will stipulate that the Administrative Law Judge fairly and accurately
19 summarized the evidence contained in the record.

20 (b) A complete summary of all testimony adduced at the administrative hearing, including
21 the Administrative Law Judge's findings, if any, concerning the credibility of witnesses,
22 which the defendant contends constitutes substantial evidence to support the administrative
23 determination that plaintiff is not entitled to the benefits in question. It will be sufficient
24 compliance with this subparagraph if the defendant will stipulate that the Administrative
25 Law Judge fairly and accurately summarized the testimony adduced at the administrative

1 hearing.

2 (c) A statement as to whether there are any inaccuracies in the summaries filed by plaintiff.

3 If the defendant believes plaintiff's summaries are inaccurate, defendant will set forth what
4 additions or corrections are required (with appropriate references to the record) in order to
5 make the summaries accurate.

6 The motions filed by plaintiff and defendant pursuant to paragraphs 5, 6 and 7 of this Order,
7 must also contain appropriate points and authorities dealing with the specific legal issues involved in this
8 case, rather than principles of law applicable to Social Security cases in general.

9 Plaintiff will be deemed to have acceded to the accuracy of the summaries supplied by the
10 defendant in response to subparagraphs 7(a) and 7(b) of this Order unless within twenty (20) days after
11 being served with defendant's motion to affirm plaintiff files and serves a reply brief setting forth:

12 (a) In what manner the summaries are inaccurate;

13 (b) What additions or corrections are required (with appropriate references to the record) in
14 order to make the summaries accurate.

15 The motions filed by both plaintiff and defendant must also contain the following:

16 (a) A statement as to whether the transcript of the administrative hearing can be adequately
17 comprehended in spite of the fact that such transcript may contain the words "inaudible"
18 or "unintelligible" in one or more places, and specifying each page, if any, in which
19 testimony relating to the particular issues of this case cannot be adequately comprehended.

20 (b) A specification of each page in the administrative record that is partially or totally
21 illegible, and a statement whether each such illegible page contains information relevant to
22 an understanding of any issue presented in this case.

23 Oral argument will be deemed waived and the case shall stand submitted unless
24 argument is ordered by the Court or requested pursuant to Local Rule 78-2, by one of the
25 parties within ten (10) days following the filing of the last document required by this Court.

1 It will be at the Court's discretion whether oral argument is granted.

2 Failure of a party to file a motion or points and authorities required by this Order may
3 result in dismissal of the action or reversal of the decision of the Commissioner of Social Security.

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5 DATED this 9th day of September, 2020.

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7 CAM FERENBACH
8 UNITED STATES MAGISTRATE JUDGE
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